

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHNNY R. HONAKER,	§	No. 614, 2005
	§	
Defendant Below,	§	Court Below—Superior Court
Appellant,	§	of the State of Delaware, in
	§	and for Sussex County
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Cr. ID No. 0212006828

Submitted: January 3, 2006
Decided: February 6, 2006

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 6th day of February 2006, upon consideration of (i) the notice of appeal filed by the appellant, (ii) the Clerk's notice to show cause, (iii) the appellant's response to the notice to show cause, and (iv) the appellee's response to the appellant's response, it appears to the Court that:

(1) On December 12, 2005, the Court received the appellant's notice of appeal from the Superior Court sentence imposed on October 28, 2005, on the appellant's third violation of probation (VOP).¹ Because the notice of appeal appeared to be untimely filed, the Clerk issued a notice

¹It appears that the Superior Court modified the October 28, 2005 VOP sentence on January 25, 2006, to give the appellant credit for time that he spent at Level V.

pursuant to Supreme Court Rule 29(b) directing that the appellant show cause why the appeal should not be dismissed.²

(2) In his response to the notice to show cause, the appellant states that his defense counsel is responsible for the delay in filing the notice of appeal. In its response opposing the appellant's response, the appellee contends that the record does not demonstrate that the appellant informed his counsel that he wanted to file an appeal.³

(3) "Time is a jurisdictional requirement."⁴ Under Delaware law and procedure, the Clerk of this Court must receive a notice of appeal within the applicable time period.⁵ The jurisdictional defect that is created by the untimely filing of notice of appeal cannot be excused "in the absence of unusual circumstances which are not attributable to the appellant or the appellant's attorney."⁶ Unless an appellant can demonstrate that the failure

²See Supr. Ct. R. 6(a)(ii) (providing that a notice of appeal must be filed within thirty days of sentencing).

³*Cf.* Supr. Ct. R. 26(a)(ii) (requiring that trial counsel docket an appeal whenever the client desires to appeal); *but cf. Brown v. State*, 1991 WL 134175 (Del. Supr.) (citing *Dixon v. State*, 581 A.2d 1115, 1117 (Del. 1990) (concluding that counsel has a continuing obligation to docket an appeal when the client informs counsel of his desire to appeal))).

⁴*Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

⁵Supr. Ct. R. 6(a), 10(a); *Carr*, 554 A.2d at 780.

⁶*Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988).

to file a timely notice of appeal is attributable to court-related personnel, the appeal cannot be considered.⁷

(4) There is nothing in the record to reflect that the appellant's failure to file a timely notice of appeal in this case is attributable to court-related personnel.⁸ Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 6 and 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁷*Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

⁸The Superior Court record reflects that the appellant filed duplicate handwritten memoranda in the Superior Court on November 15, 2005. The appellant's memoranda, addressed to "[Defense Counsel] (Prothonotary's)," stated, "I wish to appeal [the October 28, 2005] sentence." The appellant also requested the preparation of transcript. It appears that the appellant mailed one memorandum to the Superior Court Prothonotary in Sussex County and the other memorandum to the Superior Court Judges' Chambers. In response to the appellant's memoranda, the Superior Court, by letter dated November 17, 2005, informed the appellant that he must file his appeal in accordance with the Supreme Court Rules, and that his request for transcript was denied.